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Philippe Jean Henri Berna Mas Liotard - Les Brousses F30410 Molières Sur Cèze France

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AUG 1 4 1997

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AICPATENTS

In re Application of

Philippe Jean Henri Berna Application No. 08/580,493

Deposited: December 29, 1995

For: PROCESS FOR MAKING A VERSATILE

CLAMPING DEVICE DESIGNED TO HOLD

OBJECTS WITHOUT DAMAGING THEM, SUCH

A DEVICE AND ITS USE

LETTER REGARDING IMPROPER FILING

Receipt is acknowledged of the paper styled "Request For Clarification...Filing Date" filed on March 20, 1997.

In response to applicant's request to "restart the period set by" the Letter mailed January 21, 1997, applicant's attention is directed to the Letter mailed January 21, 1997. As can be seen, no period for response was set in the letter mailed January 21, 1997. The letter advised applicant that the present application is improper and of applicant's recourse.

The requirement that a continuing application be filed before the abandonment of the prior application is a requirement of law and, as such, may not be waived by the Commissioner.

It is unfortunate that the papers which applicant mailed from France on November 6, 1995, did not reach the U.S. Patent and Trademark Office (USPTO) until December 1, 1995. However any delay in the delivery of the papers to the USPTO was not the fault of the USPTO. Further, the USPTO was under no obligation, by law or regulation, to inform applicant prior to January 16, 1996 (the last day for filing a timely petition for a 3-month

extension of time), that the petition for a 1-month extension of time was untimely.

Of course, the USPTO should not have mailed a filing receipt for the present application. Since the USPTO did not inform the applicant of the improper status of the present application until more than 1-year after the actual abandonment date of the prior application, applicant was advised in the Letter mailed January 21, 1997, that he could request waiver of the 1-year time period contained in 37 CFR 1.137(b) by filing a petition under 37 CFR 1.183 along with any petition under 37 CFR 1.137(b). However, any petition under 37 CFR 1.183 and 1.137 must be promptly filed. Any further delay in filing the necessary petition to revive may result in the dismissal of the petition as untimely.

Any petitions under 37 CFR 1.137 and 1.183 <u>must</u> be promptly filed and should be addressed as follows:

By mail: Assistant Commissioner for Patents

Box DAC

Washington, D.C. 20231

By FAX: (703) 308-6916

Attn: Special Program Law Office

By hand: One Crystal Park, Suite 520

2011 Crystal Drive

Arlington, VA

The application will be retained in this office to await any petition to revive directed to prior application No. 08/321,589. Failure to seek revival of the prior application in a timely manner will result in the return of the present application to the examining group for unbundling the file of the prior application from the file of the present application, after which, the file of the present application will be returned to Application Processing Division for processing as an improper application under 37 CFR 1.62 (no filing date granted).

Telephone inquiries specific to this letter should be directed to the undersigned at (703) 305-9282.

∮ohn F. Gonzales

Senior Legal Advisor

Special Program Law Office

Office of the Deputy Assistant Commissioner

for Patent Policy and Projects

JFG